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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 873

ST. ELMO HAWKINS,
Petitioner,

v.

GENERAL MOTORS CORPORATION, GEORGE R. JONES, T/A BEALE AND JONES, and CHRYSLER CORPORATION,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

INTRODUCTION

The Petition does not present any crucial questions, constitutional or otherwise, of any public importance warranting review by this Court. Petitioner alleged that his attorneys Beale and Jones divulged his alleged invention to General Motors, which in turn obtained a patent thereon. The District Court, after hearing Petitioner's evidence, granted Respondents' motions to dismiss. The Court of Appeals affirmed. The only real issue in this case is the purely private issue of whether Plaintiff made a *prima facie* case. That issue has been decided.

I.

No jury demand was made until January 24, 1969, nine months after the last amended answer had been filed. At this time, the trial date had been set.[1] The District Court proceeded to hear the case without a jury on February 17, 1969. Petitioner was given every opportunity to prove his case. When Petitioner rested, the Respondents moved to dismiss for failure to make out a *prima facie* case. The Trial Judge then made tentative findings of fact, but deferred ruling on the motions so as to give Petitioner time to cite any evidence contrary to the tentative findings (TR. 547-562). On February 19, 1969, the Trial Judge heard oral argument on Respondents' Motions to dismiss. He then rendered a second opinion dismissing Petitioner's complaint against Respondents for lack of evidence.[2] Judgment was entered on March 6, 1969.

II.

Petitioner contends that his demand for a jury trial was timely, and that the denial of a jury trial was an abridgement of Petitioner's right under the Seventh Amendment to the Constitution. Both contentions are wrong. Petitioner's demand for a jury trial was endorsed on a Motion to Amend the Amended Pleadings, filed during the formal pretrial conference on January 24, 1969.[3] This was long

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[1] A notice setting trial by Court was sent out on November 27 1968.

[2] Petitioner's Brief, Ap. A., pp. 1a-19a.

[3] Petitioner's Brief, Ap. F., p. 24a. These amendments did not change the issue for trial as framed by the Trial Judge and agreed to by all parties (TR. 144, 145).

after expiration of the 10-day period of Rule 38(b). The Trial Judge was plainly correct in denying the demand.

But even if the demand was timely, the error was harmless. The District Court heard all the evidence Petitioner had. The Trial Judge used the jury trial standard in evaluating Petitioner's evidence and concluded that the evidence did not make a *prima facie* case.[4] If a jury had been present, there would have been a directed verdict for Respondents.[5] It follows that if there was error below in denying the demand for a jury trial, it was a harmless error which would not have affected the outcome of the litigation.

III.

Petitioner does not change the situation by the contrived question of whether Rule 38(d) is unconstitutional. We don't think there is any real question of constitutionality. But if there were, this is not the case for decision as to it. Petitioner has had his day in Court, he failed to make out a *prima facie* case, and there is no issue for jury consideration in any event. As pointed out by this Court in *Light v. United States*, 220 US 523, 538 (1911):

> "For, as said in *Siler v. Louisville & N. R. Co.*, 213 U.S. 193, . . . 'where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued, and is not departed from without important reasons.'"

As stated by Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1935):

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[4] Petitioner's Brief, Ap. A., p. 1a.

[5] Petitioner's Brief, Ap. A., p. 8a.

> "The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter."

IV.

Petitioner also seeks reversal because of the failure of the District Court to make specific subsidiary findings of fact regarding patent ownership. We perceive no reason why the District Court should have made such findings, and Petitioner's brief does not state one.[6] In any event, this failure was at most an incomplete adjudication of a private controversy. It falls far short of a substantial issue of public importance, justifying review by this Court.

This is a private controversy that was decided below after a trial where Petitioner did not make out a *prima facie* case. The petition should be denied.

Respectfully submitted,

GEORGE E. FROST
Detroit, Michigan
Attorney for Respondent
General Motors Corporation
WARREN E. FINKEN
WILLIAM A. SCHUETZ
Detroit, Michigan
WILLIAM R. PERLIK
Washington, D.C.
Of Counsel

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[6] Moreover, Petitioner neither proposed nor requested the District Court to make any fact findings.